

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202003810	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 6:00 PM	Location of Incident: Bedford Avenue between Tilden Avenue and Albemarle Road	Precinct: 70	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 06/02/2020 11:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 06/02/2020 11:58 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Pierre	02499	962014	070 PCT
2. LT Ramiro Ruiz	00000	939384	025 PCT
3. Officers			
4. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Imran Khan	05564	956020	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Pierre	Abuse: Police Officer Christopher Pierre threatened § 87(2)(b) with the use of force.	
B.POM Christophe Pierre	Force: Police Officer Christopher Pierre struck § 87(2)(b) with a baton .	
C.POM Christophe Pierre	Force: Police Officer Christopher Pierre struck an individual with a baton.	
D.POM Christophe Pierre	Force: Police Officer Christopher Pierre struck § 87(2)(b) with a baton.	
E. Officers	Force: Officers used physical force against individuals.	
F.LT Ramiro Ruiz	Force: Lieutenant Ramiro Ruiz used pepper spray against an individual.	
G.LT Ramiro Ruiz	Force: Lieutenant Ramiro Ruiz used pepper spray against § 87(2)(b)	
H. An officer	Force: An officer used pepper spray against an individual.	

## Case Summary

On June 2nd, 2020, § 87(2)(b) filed the following complaint via the CCRB website [BR 1].

On May 30<sup>th</sup>, 2020, § 87(2)(b) and her sister, § 87(2)(b) participated in a George Floyd/Black Lives Matter demonstration at the intersection of Bedford and Tilden Avenues in Brooklyn. At about 5:25 p.m., Police Officer Christopher Pierre and many other police officers began clearing protesters from Bedford Avenue, to make way for an NYPD RMP that was transporting a prisoner. PO Pierre threatened to push and pepper spray § 87(2)(b) if she did not move out of the way [**Allegation A: Abuse of Authority – Threat of Force**, § 87(2)(g)]. PO Pierre then repeatedly used his baton to shove § 87(2)(b) toward the side of Bedford Avenue [**Allegation B: Force – Nightstick**, § 87(2)(g)]. PO Pierre also used his baton to shove an unidentified woman repeatedly [**Allegation C: Nightstick**, § 87(2)(g)] and § 87(2)(b) a single time [**Allegation D: Force – Nightstick**, § 87(2)(g)].

About twenty minutes later, multiple officers shoved protesters toward the western sidewalk on Bedford Avenue in the course of trying to apprehend two protesters [**Allegation E: Force – Physical Force**, § 87(2)(g)]. Lt. Ramiro Ruiz, assigned at the time to the 70<sup>th</sup> Precinct, pepper sprayed a man that was attempting to prevent officers from taking one of these protesters into custody [**Allegation F: Force – Pepper Spray**, § 87(2)(g)]. Seconds later, Lt. Ramiro Ruiz pepper sprayed § 87(2)(b) [**Allegation G: Force – Pepper Spray**, § 87(2)(g)]. Shortly thereafter, an officer pepper sprayed an unidentified male protester [**Allegation H: Force – Pepper Spray**, § 87(2)(g)].

The CCRB received a total of 22 body-worn camera videos for this case, distributed across two requests [BR 2 and 3].

**Allegation A – Abuse of Authority: Police Officer Christophe Pierre threatened to use force against § 87(2)(b)**

**Allegation B – Force: Police Officer Christophe Pierre struck § 87(2)(b) with a baton.**

**Allegation C – Force: Police Officer Christophe Pierre struck an individual with a baton.**

**Allegation D – Force: Police Officer Christophe Pierre struck § 87(2)(b) with a baton.**

On May 30<sup>th</sup>, 2020, at about 5:15 p.m., Police Officers Salvatore Carcaterra and Arthur Becerra of the 70<sup>th</sup> Precinct arrested a protester at the intersection of Bedford and Tilden Avenues in Brooklyn, and placed her in their vehicle, RMP § 87(2)(b). Protesters surrounded the vehicle and blocked traffic along Bedford Avenue. This is seen in body-worn camera footage recorded by PO Carcaterra [BR 4], between 01:00 and 08:40, when the vehicle is finally able to move forward. PO Pierre stated during his CCRB interview [BR 5] that he and other officers determined that PO Becerra and PO Carcaterra needed to transport the prisoner to the 70<sup>th</sup> Precinct stationhouse immediately, because protesters at the location posed a danger to the officers. Many protesters threw objects at officers standing near the RMP. Some protesters were touching parts of the RMP. As well, PO Pierre was concerned that protesters would attempt to extract the prisoner from the vehicle. Thus, PO Pierre and other officers, without directions from a supervisor, decided to clear Bedford Avenue of protesters to make a path for the RMP. PO Pierre stated his intention was to order or forcibly move all protesters to the side of Bedford Avenue, so that they did not impede the RMP.

Multiple body-worn camera videos, including those of Police Officer Justin Stewart [BR 6], Sergeant Steven Owens [BR 7], and PO Pierre [BR 8], capture the officers' advance north along Bedford Avenue. Footage from PO Pierre's body-worn camera, between 7:00 and 12:00 minutes, shows PO Pierre clearing the roadway of protesters. At 09:47 minutes in this footage, § 87(2)(b) is seen standing on Bedford Avenue, just in front of an unidentified RMP that is parked in

the crosswalk between the north and south side of Tilden Avenue. (She is wearing a black t-shirt, sunglasses, and a green face mask; she is holding a sign stating “Fuck the Police.”) At 10:00 in PO Pierre’s body-worn camera, he is heard stating “I’m going to start pushing.” At 10:04, either Officer Becerra or Officer Carcaterra is heard stating over their RMP’s public announcement system “pepper spray; pepper spray.” § 87(2)(b) backs away from PO Pierre, northward along Bedford Avenue. There are multiple protesters directly behind § 87(2)(b) limiting the speed at which she can back up. At 10:09, PO Pierre states “pepper spray is coming” to § 87(2)(b).

PO Pierre then presses his baton into § 87(2)(b) sternum, states “come on; I asked,” and pushes § 87(2)(b) backward for seven seconds. PO Pierre appears to be using minimal force during these seven seconds; he is simply walking forward while pressing his baton into § 87(2)(b) chest. § 87(2)(b) acknowledged during her CCRB interview [BR 9] that she did not fully comply with PO Pierre, and attempted to stand her ground. She is seen doing so at 10:18. At 10:28, § 87(2)(b) is standing to the side of the road, inside the bike lane. PO Pierre instructs her to “go that way.” PO Pierre shoves his baton into her sternum again at 10:32.

At 10:37, PO Pierre shoves his baton into the chest of an unidentified woman, and instructs her to move. It is not possible to determine how far this woman is from RMP § 87(2)(b) at this point. However, it appears that she is closer than § 87(2)(b) is to the lane of traffic in which the RMP is travelling. PO Pierre shoves § 87(2)(b) toward the side of the road again at 11:22. § 87(2)(b) moves back into PO Pierre’s path. Judging by the sound of the sirens, RMP 3661 is at this point nearing PO Pierre. PO Pierre shoves § 87(2)(b) once, at 11:25 minutes, after § 87(2)(b) places her arm between PO Pierre and § 87(2)(b) apparently to prevent him from shoving § 87(2)(b). PO Pierre then uses his baton to hold § 87(2)(b) back from the RMP, which is apparently now just behind PO Pierre. At 11:36, § 87(2)(b) apparently attempts to regain her position in front of PO Pierre. PO Pierre responds with the hardest shove yet, propelling § 87(2)(b) about three or four feet backwards. § 87(2)(b) stated that PO Pierre’s shoving bruised her torso.

In total, PO Pierre pushed § 87(2)(b) with his baton seven times, and § 87(2)(b) once. PO Pierre did not recall shoving § 87(2)(b) or § 87(2)(b) but acknowledged seeing himself doing so in his BWC footage. PO Pierre stated that, based on this footage, § 87(2)(b) was not complying with his orders to move to the side of the road. He therefore used his baton to “guide” § 87(2)(b) to the side of the road, so that she would not obstruct the path of RMP 3661.

NYS VTL § 1156 provides that where sidewalks are provided and they may be used with safety it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. New York State CLS Vehicle and Traffic Law § 1156 [BR 10].

NYPD PG 221-01 (Use of Force) states that, whenever possible, MOS must use de-escalation techniques to gain compliance without the use of force. If force is necessary, MOS will use only the reasonable force necessary to gain compliance or control of a subject. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide 221-01 [BR 11].

NYPD PG 221-02, in part, defines “passive resistance” as minimal physical action to prevent a member from performing their lawful duty. For example, subject failing to comply with a lawful command. Examples of passive resistance include a subject standing motionless and/or a subject going limp when being taken into custody. NYPD Patrol Guide 221-02 [BR 12].

§ 87(2)(b), § 87(2)(g)

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**Allegation E – Force: Officers used physical force against individuals.**

**Allegation F - Force: Lieutenant Ramiro Ruiz pepper sprayed an individual.**

**Allegation G – Force: Lieutenant Ramiro Ruiz pepper sprayed** § 87(2)(b)

At about 5:47 p.m., on the west side of Bedford Avenue, about three building-lengths north of Tilden Avenue, multiple officers began pushing protesters toward the western sidewalk. Captain Zelikov’s body-worn camera footage [BR 13], in which he is seen ordering officers to form lines and corral protesters toward the sidewalks, suggests a coordinated effort to remove protesters from the roadway. Consistently, Sergeant Imran Khan of the 70<sup>th</sup> Precinct stated during his CCRB interview [BR 14] that the officers’ main objective was to remove protesters from the roadway. Protesters resisted officers’ efforts to move them to the sidewalks, according to Sgt. Khan, and were generally “impossible to control.”

Footage from PO Haber’s body-worn camera [BR 15], at 16:40, captures himself and other officers ordering protesters in the roadway to get back. At 17:11 in the same footage, PO Haber approaches the west sidewalk, with multiple other officers. Between 17:17 and 17:40, it appears that officers are attempting to arrest multiple subjects. Some protesters near the edge of the sidewalk attempt to “de-arrest” these subjects, by holding on to them and trying to drag them away from the officers. This is also seen in PO Hick’s body-worn camera footage [BR 16] between 00:43 and 00:55. Multiple officers are seen in PO Haber’s footage pushing protesters toward or onto the sidewalk, as § 87(2)(b) described during her CCRB interview [BR 17]. § 87(2)(b) stated that some of these protesters became trapped under various objects on the sidewalk, including one man directly in front of her, who became trapped underneath his bicycle.

*[These events are captured in PO Haber and PO Hicks’s body-worn camera footage. To make the sequence of events more intelligible, screenshots are board-reviewed below. The board-reviews cited next to each time-stamp below refer to corresponding screenshots.]*

§ 87(2)(b) – wearing a white t-shirt and a purple shawl -- is seen at 17:36 [BR 18] in

PO Haber's body-worn camera footage, extending her arm toward a man that has just been pushed – or fallen – onto the sidewalk. This is also seen at 00:55 in PO Hicks's body-worn camera footage. § 87(2)(b) helps this man onto his feet. There is no indication that this the man is under arrest. At 17:37 [BR 19] in PO Haber's BWC footage, at the very right of the frame, Lt. Ruiz is seen standing behind a silver SUV, firing his pepper spray at a black man wearing eye glasses that appears to be "de-arresting" a protester. (A thin, concentrated jet can be seen discharging from Lt. Ruiz's can.) Lt. Ruiz then raises the can -- as seen at 17:43 [BR 20] in PO Haber's footage and at 01:02 in PO Hick's footage -- and discharges it at § 87(2)(b) who appears to be simply standing and observing the arrests taking place in front on her. She is seen being sprayed at 01:03 [BR 21] in PO Hick's body-worn camera. PO Hicks and PO Haber's BWC videos of these events can be seen simultaneously and side-by-side in a video created in InputAce [BR 22]. § 87(2)(b) stated that she was sprayed in the face and immediately lost sight. No protesters in § 87(2)(b)'s vicinity appear to have been affected by the pepper spray, indicating that Lt. Ruiz targeted § 87(2)(b) as opposed to spraying indiscriminately.

During his CCRB interview [BR 23], Lt. Ruiz stated that he was wearing a riot helmet with the shield number 2622, which belongs to Police Officer Wardah Iqbal of the 70<sup>th</sup> Precinct. He then identified as himself the officer seen in PO Haber's body-worn camera footage wearing a helmet with shield number 2622 and holding a can of pepper spray. However, Lt. Ruiz denied any recollection of the incident, and stated that he could not determine from the footage whether he actually discharged the pepper spray, or merely pointed the can as a show of force. Lt. Ruiz noted that many protesters persistently threw objects and shot fireworks at officers over the course of the demonstration, in some cases warranting officers' use of force. This is consistent with PO Pierre's testimony, as well as with that of Sgt. Khan. The melee captured in PO Haber's body-worn camera footage, according to Lt. Ruiz, could have warranted the use of pepper spray, so far as protesters were attempting to obstruct arrests and were generally assembled unlawfully. Lt. Ruiz stated that he received training in the use of pepper spray to control disorderly crowds approximately nine years ago. He did not recall any of the regulations or tactics included in the training.

NYS VTL § 1156 provides that where sidewalks are provided and they may be used with safety it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway. New York State CLS Vehicle and Traffic Law § 1156 [BR 12].

New York State Penal Law 195.05 provides that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function. New York State CLS Penal § 195.05 [BR 24]

Under NYPD PG 221.01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. MOS will use only the reasonable force necessary to gain control or custody of a subject. In determining whether a use of force is reasonable, the following should be considered: actions taken by the subject, duration of the action, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, number of subjects in comparison to the number of MOS, and the presence of hostile crowd or agitators. NYPD Patrol Guide 221-01 [BR 11].

Under NYPD PG 221-07, pepper spray may be used to gain or maintain control of persons

who are actively resisting arrest or lawful custody or exhibiting active aggression (“threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent”), or to prevent individuals from physically injuring members of service or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force. Members should avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control. (The only exception is for members that have received specific training in the use of pepper spray for disorder control, and who have been directed by a supervisor to deploy the spray.) NYPD Patrol Guide 221-07 [BR 25].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Allegation H: An officer pepper sprayed an individual**

##### **Known Facts and General Descriptions**

§ 87(2)(b) stated that at roughly the same time § 87(2)(b) was pepper sprayed, a tall black man was also pepper sprayed. At 01:07 in PO Hick’s footage, a man fitting this description is seen being pepper sprayed. § 87(2)(b) and Lindsay § 87(2)(b) were unable to provide a description of the subject officer.

### Body-worn camera footage

The investigator viewed all twenty-two videos received for this case, as well as all BWC footage received for cases 202004408, 202003797, and 202003703. In addition to PO Hick's BWC footage, the incident is also seen between 00:17 and 00:21 in Sgt. Schilling's body-worn camera video [BR 26]. At 00:13 [Screenshot - BR 27] in the simultaneous presentation of PO Haber and PO Hick's body-worn camera footage, it is evident that the subject officer is wearing a black glove. Lt. Ruiz is thus ruled out, as he is not seen wearing a black glove in the footage of him pepper spraying § 87(2)(b). Of the videos reviewed for this case, those belonging to PO Haber, PO Hicks, and Sgt. Schilling are the only three that capture this incident. Neither the subject officer's face nor his shield number can be discerned in any of these videos.

### NYPD documents reviewed

It was not possible to use documents to identify the subject officer. There were no detail rosters for the location. Hundreds of officers from various commands responded to the location, making it impossible to identify officers using command roll calls. Additionally, there were no AIDEDs, Threat, Resistance, or Injury reports, or other NYPD documents directly related to this incident.

### Concurrent investigations

In a telephone conversation on February 16<sup>th</sup>, 2021, Detective Hussain of Internal Affairs Bureau, Force Investigations (Group 54) confirmed that there are no concurrent investigations into this incident.

### Officers interviewed/Ranking Officer on Scene

Lt. Ruiz and Sgt. Khan were the only members of service interviewed in regards to this allegation. Neither Lt. Ruiz nor Sgt. Khan recalled himself or any other officers using pepper spray. Both members stated that the demonstration at the intersection of Bedford and Tilden was very chaotic, with each officer on scene following his or her own instincts and training, as opposed to a systemic effort at disorder control. Both members also noted that they patrolled many George Floyd/Black Lives Matter Protests over the course of a few weeks in late May and early June; it was therefore difficult to differentiate individual demonstrations, and to recall the actions that officers took during each demonstration.

Captain Zelikov was interviewed for case 202004408 [BR 33]. Captain Zelikov stated that he ordered officers to form a "rectangular perimeter," so that all protesters were concentrated in front of the officers. This is consistent with body-worn camera footage, in which Captain Zelikov is seen walking down Tilden Avenue, instructing officers to hold the line against protesters on the sidewalk. Captain Zelikov acknowledged telling officers to "hold the line," but otherwise did not recall issuing any instructions to officers. Captain Zelikov stated that his intentions in ordering officers to hold the line were to maintain control of the crowd and protect officers' safety. Captain Zelikov was unable to speak to any broader strategy for controlling the protesters.

Because the available footage does not capture any identifying characteristics of the subject officer, nor of other members of service in the area of the incident, the investigation was not able to interview the subject of this allegation.

### Allegation Recitation

On May 30<sup>th</sup>, 2020, an officer pepper sprayed an unidentified individual. This incident is partly captured in body-worn camera footage. However, there is no footage of the subject officer. Because there is no footage or documents related to this incident, or any descriptions of the subject officer, it was impossible to determine this officer's identity. § 87(2)(b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first complaint to which either § 87(2)(b) [BR 28] or § 87(2)(b) [BR 29] has been a party.
- Lt. Ruiz has been a member of service for 15 years, over which time he has been the subject of 14 other CCRB complaints and 29 allegations, 3 of which have been substantiated.
  - 201311028 involved an allegation of Abuse – Other (unlawful arrest) which was substantiated and resulted in a board disposition of formalized training, and an NYPD penalty of instructions.
  - 201505505 involved an allegation of Abuse – Other (unlawful arrest) and stop, both of which were substantiated and resulted in a board disposition of command discipline – A. The NYPD penalty is not listed in CTS.
  - 202004517 involves an allegation of physical force, and is still under investigation to date.
  - There is no pattern reflected in the allegations substantiated against Lt. Ruiz.
- PO Pierre has been a member of service for four year, over which time he has been the subject in four other CCRB complaints and eight allegations, one of which has been substantiated
  - Complaint 201809275 involved an allegation of offensive language – other, which was substantiated and resulted in formalized training
  - Complaints 202003797 – which involves two separate allegations of force (nightstick as club) -- and 202004408 – which involves an allegation of physical force and an allegation of force (nightstick as club) -- both of which stem from the George Floyd/Black Lives Matter protests, are still under investigation to date.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation per agency operating procedure regarding protest-related incidents.
- The New York City Office of Court Administration shows that neither § 87(2)(b) nor § 87(2)(b) has been convicted of a crime in New York City [BR 30 and 31]
- On February 24<sup>th</sup>, 2021 the NYC Comptroller's office confirmed that there are no notices of claim in regards to this incident [BR 32].

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Squad No.: 7



